

§ 20.103

Suspension and revocation proceeding or S&R proceeding means a trial-type proceeding for the suspension or revocation of a merchant mariner's license, certificate of registry, or document issued by the Coast Guard that affords an opportunity for an oral, fact-finding hearing before an ALJ.

§ 20.103 Construction and waiver of rules.

(a) Each person with a duty to construe the rules in this part in an administrative proceeding shall construe them so as to secure a just, speedy, and inexpensive determination.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief ALJ, or a presiding ALJ may, after notice, waive any of the rules in this part either to prevent undue hardship or manifest injustice or to secure a just, speedy, and inexpensive determination.

(c) Absent a specific provision in this part, the Federal Rules of Civil Procedure control.

Subpart B—Administrative Law Judges

§ 20.201 Assignment.

An ALJ, assigned by the Chief ALJ after receipt of the complaint, shall preside over each administrative proceeding under this part.

§ 20.202 Powers.

The ALJ shall have all powers necessary to the conduct of fair, fast, and impartial hearings, including the powers to—

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on motions;
- (d) Order discovery as provided for in this part;
- (e) Hold hearings or settlement conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Issue decisions;
- (i) Exclude any person from a hearing or conference for disrespect, or disorderly or rebellious conduct; and
- (j) Institute policy authorized by the Chief ALJ.

33 CFR Ch. I (7–1–05 Edition)

§ 20.203 Unavailability.

(a) If an ALJ cannot perform the duties described in § 20.202 or otherwise becomes unavailable, the Chief ALJ shall designate a successor.

(b) If a hearing has commenced and the assigned ALJ cannot proceed with it, a successor ALJ may. The successor ALJ may, at the request of a party, recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 20.204 Withdrawal or disqualification.

(a) An ALJ may disqualify herself or himself at any time.

(b) Until the filing of the ALJ's decision, either party may move that the ALJ disqualify herself or himself for personal bias or other valid cause. The party shall file with the ALJ, promptly upon discovery of the facts or other reasons allegedly constituting cause, an affidavit setting forth in detail the reasons.

(1) The ALJ shall rule upon the motion, stating the grounds for the ruling. If the ALJ concludes that the motion is timely and meritorious, she or he shall disqualify herself or himself and withdraw from the proceeding. If the ALJ does not disqualify herself or himself and withdraw from the proceeding, the ALJ shall carry on with the proceeding, or, if a hearing has concluded, issue a decision.

(2) If an ALJ denies a motion to disqualify herself or himself, the moving party may, according to the procedures in subpart J of this part, appeal to the Commandant once the hearing has concluded. When that party does appeal, the ALJ shall forward the motion, the affidavit, and supporting evidence to the Commandant along with the ruling.

§ 20.205 Ex parte communications.

Ex parte communications are governed by subsection 557(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).